

JASON M. WUCETICH (STATE BAR NO. 222113)
jason@wukolaw.com
DIMITRIOS V. KOROVILAS (STATE BAR NO. 247230)
dimitri@wukolaw.com
WUCETICH & KOROVILAS LLP
222 N. Pacific Coast Hwy., Suite 2000
El Segundo, CA 90245
Telephone: (310) 335-2001
Facsimile: (310) 364-5201

Attorneys for Plaintiff
STEVEN FUHRER

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CGC-21-597070

STEVEN FUHRER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

NEUTRON HOLDINGS, INC., a
corporation; and DOES 1 through 10,

Defendants.

CASE NO.

CLASS ACTION

COMPLAINT FOR:

1. **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (LAB. CODE § 2698 ET SEQ.);**
2. **FAILURE TO PAY MINIMUM WAGE AND ALL WAGES EARNED (LAB. CODE §§ 216, 1194, 1194.2, 1197);**
3. **FAILURE TO PAY OVERTIME COMPENSATION (LAB. CODE § 1194);**
4. **FAILURE TO PAY MEAL AND REST PERIOD COMPENSATION (LAB. CODE §§ 226.7 & 512);**
5. **FAILURE TO PAY BUSINESS EXPENSES (LAB. CODE § 2802);**
6. **WAITING TIME PENALTIES (LAB. CODE § 203);**
7. **FAILURE TO PAY TIMELY WAGES (LAB. CODE § 204);**
8. **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS (LAB. CODE § 226);**
9. **UNFAIR BUSINESS PRACTICES (BUS. & PROF. CODE § 17200.);**
10. **PUBLIC INJUNCTIVE RELIEF AND DELARATORY JUDGMENT (CIV. PRO. CODE § 1060)**

DEMAND FOR JURY TRIAL

1 Plaintiff Steven Fuhrer hereby brings the below class action claims for damages and
2 injunctive relief pursuant to Cal. Civ. Pro. Code § 382, as well as representative claims for civil
3 penalties pursuant to the Private Attorneys General Act of 2004, against defendant Neutron
4 Holdings, Inc. Plaintiff brings this action on behalf of all persons who currently or previously
5 were hired to perform work or did perform work as “Logistics Providers” (previously and
6 sometimes still referred to by Defendant as “Juicers”) charging Defendant’s “Lime” brand of
7 electric scooters in California since January 2020 and who were erroneously classified by
8 Defendant as independent contractors, as defined more specifically in the PAGA Collective and
9 Class Action Allegations sections below.

10 **SUMMARY OF THE CASE**

11 1. This action is based on Neutron Holdings, Inc.’s willful misclassification of its
12 charger workforce as independent contractors, giving rise to numerous violations of California
13 labor law. Neutron Holdings, Inc. d/b/a “Lime” (hereinafter “Lime”) is a dockless scooter-share
14 company based in San Francisco, California, operating under the brand name “Lime”. Founded
15 in approximately January 2017, Lime operates electric scooters in over 100 cities throughout the
16 United States, including San Francisco and various other cities throughout California. Lime has
17 quickly grown to service hundreds of thousands of users and has reportedly been previously
18 valued at over \$2 billion.

19 2. Yet Lime’s success is unfortunately built on the backs of a misclassified and
20 underpaid work force. Each electric Lime scooter is powered using a rechargeable battery, which
21 depletes quickly. Though battery life depends on a variety of factors, including frequency and
22 intensity of use, scooters generally require daily charging. Lime’s continued operation depends
23 entirely on its employment of an army of “Logistics Providers”(hereinafter “LPs”), which in
24 California Lime previously and sometimes does still call “Juicers” – thousands of individuals
25 hired by Lime to venture out at night and manually collect a depleted scooter, take it home to
26 recharge, and release it back onto the street for use by customers. Lime controls each step in this
27 process through its Lime app. The app instructs the LP or Juicer where depleted scooters are
28 located. Once charged, the app pinpoints specific locations where LPs or Juicers are required to

1 release scooters back onto the street. LPs or Juicers are generally required to release the scooters
2 only in these locations, in sets of three, and by certain times of day. In order to charge the
3 scooters at home, Lime requires LPs or Juicers to use specific charging equipment that chargers
4 must obtain from Lime at their own expense, and to supply their own electricity source. Lime
5 imposes strict requirements with which LPs and Juicers must comply regarding their work,
6 including its “BLT standard” (i.e., battery, timing, and location requirements), and LPs and
7 Juicers are subject to pay reduction for failure to comply.

8 3. Lime does not pay LPs or Juicers for all time worked, but rather on a piece-rate
9 basis. Lime pays LPs or Juicers a flat fee, generally \$5, for each scooter that a LP or Juicer
10 successfully collects, recharges, and releases back onto the street. In many instances, however,
11 collecting a particular scooter turns out not to be possible or takes an excessive amount of time,
12 due to errors in the Lime app, interference from other LPs or Juicers (such as when a scooter has
13 already been collected by someone else before the charger arrives), barriers (such as when a
14 scooter has been taken into a customer’s home or is behind a fence), because the scooter is
15 broken, or other reasons. LPs or Juicers may therefore spend significant time working for Lime
16 in an attempt to locate, collect, and recharge scooters, only to be unsuccessful at collecting any.
17 Or to spend an excessive amount of time collecting only one or a few scooters, earning little to no
18 money for all their time worked. Even generally absent significant problems or interference, the
19 process of locating, travelling to, collecting, recharging, and releasing a scooter back to a
20 designated location can take hours, with a LP or Juicer earning potentially only \$5. Lime does
21 not reimburse workers for the costs of electricity necessary to recharge the scooters, for costs of
22 the vehicle or gas used in the course of travelling around a city to locate and collect scooters by
23 car, for expenses related to the necessary use of a smartphone, for the costs of the specific
24 equipment necessary to charge the scooters, for shipping charges related to the shipment of such
25 equipment from Lime to the LP or Juicer, or for any other expenses incurred in performing their
26 work.

27 4. These practices, set forth in more detail below, violate various provisions of the
28 California Labor Code. Plaintiff brings this action pursuant to Civ. Pro. Code § 382 to assert

1 class action claims for damages, restitution, and injunctive relief on behalf of the class defined
2 herein, as well as to assert representative claims on behalf of the State of California pursuant to
3 the Private Attorneys General Act of 2004, codified in Labor Code § 2698 *et seq.* (“PAGA”), to
4 recover civil penalties related to the aggrieved employees as defined herein.

5 5. Expressly excluded from this action are any claims for PAGA penalties released
6 by settlement of *In re Neutron Wage & Hour Cases*, San Francisco Superior Court Case No. CJC-
7 19-005044, Judicial Council Coordination Proceeding Case No. 5044, the release in which
8 expressly does not extend to any claims related to Lime’s use of “Logistics Providers” beginning
9 in or after January 2020.

10 **JURISDICTION & VENUE**

11 6. This Court has subject matter jurisdiction over this action pursuant to California
12 Code of Civil Procedure § 410.10 and Labor Code § 2698 *et seq.* This Court has personal
13 jurisdiction over Defendant because Defendant has its principal place of business in California
14 and within this county, conducts business in the State of California and within this county, and
15 has caused injuries in the State of California and within this county.

16 7. Venue as to Defendant is proper in this Court pursuant to Code of Civil Procedure
17 § 395(a) and 395.5 because Defendant’s principal place of business is within this county,
18 Defendant resides in this county, Defendant transacts business in this county that is the subject of
19 this lawsuit, and because the causes of action accrued in part within this County.

20 **PARTIES**

21 8. At all relevant times alleged herein, Plaintiff Steven Fuhrer is and was a citizen of
22 the State of California.

23 9. On information and belief, defendant Neutron Holdings, Inc. is a corporation
24 organized under the laws of the State of Delaware with its principal place of business in San
25 Francisco, California.

26 10. Plaintiff is unaware of the true names and capacities, whether individual,
27 association, partnership, corporation, other otherwise, of Does 1 through 10, and therefore sues
28 these defendants by these fictitious names. Each Doe defendant is the principal, agent, or

1 employee of the other and was acting within the scope of such agency or employment to commit
2 the acts alleged herein. Each Doe defendant sued herein aided and abetted the other with the
3 intent that each would be successful in their mutual endeavors. Each Doe defendant contributed
4 to the statutory violations alleged herein. Plaintiff will amend this complaint to allege the Doe
5 defendants' true names and capacities when they become known to Plaintiff.

6 **FACTUAL BACKGROUND**

7 Lime's Willful Misclassification of LPs (or "Juicers") as Independent Contractors

8 11. In order to circumvent California wage and hour laws, Lime willfully misclassifies
9 its LP and Juicer workforce as independent contractors. As noted by the California Supreme
10 Court, there are substantial economic incentives for a business to mischaracterize workers as
11 independent contractors rather than employees. *See Dynamex Operations v. Superior Court*, 4
12 Cal. 5th 903 (2018). These include the unfair competitive advantage the business may obtain
13 over competitors that properly classify similar workers as employees and that thereby assume the
14 fiscal and other responsibilities and burdens that an employer owes to its employees. If a worker
15 should properly be classified as an employee, the hiring business bears the responsibility of
16 paying federal Social Security and payroll taxes, unemployment insurance taxes and state
17 employment taxes, providing worker's compensation insurance, and, most relevant here,
18 complying with numerous statutes and regulations governing the wages, hours, and working
19 conditions of employees. On the other hand, if a worker should properly be classified as an
20 independent contractor, the business does not bear any of those costs or responsibilities, the
21 worker obtains none of the numerous labor law benefits, and the public may be required under
22 applicable laws to assume additional financial burdens with respect to such workers and their
23 families. *Id.*

24 12. In *Dynamex*, the Supreme Court adopted what has become known as the "ABC"
25 test in determining whether a worker may properly be categorized as an independent contractor.
26 It is clear under that standard that Lime has misclassified its workforce of LPs or Juicers. The
27 Supreme Court held in *Dynamex* that a hiring entity must establish all of the following to support
28 the classification of a worker as an independent contractor:

- a. that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- b. that the worker performs work that is outside the usual course of the hiring entity's business; and
- c. that the worker is customarily engaged in an independently established trade, occupation, or business.

Dynamex, 4 Cal. 4th at 964. Lime cannot satisfy any of these requirements with respect to its LP or Juicer workers, let alone all of them as required.

13. Perhaps most glaringly, LPs or Juicers are not performing work that is outside the usual course of Lime's business. To the contrary, LPs or Juicers are performing work that is central to Lime's business. Absent LP's or Juicers' work of collecting, recharging, and replacing the scooters back onto the street, the scooters would all quickly be depleted, could not operate, and Lime's business would altogether cease. In addition, LPs or Juicers are not free from the control and direction of Lime when recharging scooters. Rather, as referenced above, Lime tells LPs or Juicers exactly where to go to locate depleted scooters, Lime tells LPs or Juicers exactly where to go to release recharged scooters back onto the street, Lime requires LPs or Juicers to use specific equipment that they must obtain from Lime to recharge scooters, and Lime requires that LPs or Juicers release scooters onto the street during designated times of day and in sets of three. Lime controls all these aspects of its LPs' or Juicers' work through its Lime app. Lime in many instances docks a LP's or Juicer's pay if these tasks are not performed in compliance with the company's requirements, including its BLT standard. Finally, LPs or Juicers are not customarily engaged in an independently established trade, occupation, or business. Rather, LPs or Juicers are performing tasks specifically for Lime that require no particular skill, license, or trade skill. Accordingly, under the *Dynamex* standard, there is no question that chargers must be considered employees, not independent contractors.

14. Notably, even under the standard that was applicable prior to *Dynamex*, Lime cannot properly classify its LPs or Juicers as independent contractors. *See Borello v. Dep't of*

1 *Industrial Relations*, 48 Cal. 3d 341 (1989) (discussing variety of factors to be considered in
2 determining independent contractor status). Similar to the analysis under the current standard,
3 consideration of those factors leads to the inevitable conclusion that the LPs or Juicers should be
4 considered employees. Lime has control or the right to control LPs or Juicers both as to the work
5 done and the manner and means in which it is performed. LPs or Juicers are not performing
6 services in an occupation or business distinct from Lime. Charging is instead a part of Lime's
7 regular business – indeed, it is a central and necessary component of the business. Lime supplies
8 the equipment used by LPs or Juicers, instructs them where to locate depleted scooters, and
9 instructs them where and when to release recharged scooters. The services provided require no
10 special skill, nor does chargers' opportunity for profit or loss depend on any managerial skill.
11 Services are generally expected to be performed continuously and permanently, as charging is a
12 daily necessity to Lime's continued operation. For these and other reasons, even under the
13 standard applicable prior to *Dynamex*, chargers could not properly be classified as independent
14 contractors.

15 15. Lime also cannot satisfy the business-to-business exception to *Dynamex* and Labor
16 Code § 2750.3 and § 2775 that was previously set forth in Labor Code § 2750.3(e) and now §
17 2776 because Lime cannot satisfy all of the elements required in those statutes to establish a bona
18 fide business-to-business contractual relationship with LPs and Juicers. Specifically, LPs and
19 Juicers are not free from Lime's control and direction for the reasons set forth above, the
20 contracts that LPs and Juicers have with Lime do not specify in writing their payment amounts
21 and payment rates, LPs and Juicers do not have required business licenses or tax registrations,
22 LPs and Juicers are not customarily engaged in independently established businesses of the same
23 nature as that involved in the work performed, LPs and Juicers do not advertise and hold
24 themselves out to the public as available to provide the same or similar services as performed for
25 Lime, LPs and Juicers do not provide their own tools (rather charging cables are obtained from
26 Lime at LPs' and Juicers' own expense), LPs and Juicers cannot negotiate their own rates (rather
27 Lime sets rates for tasks presented to LPs and Juicers on a take-it-or-leave-it basis), and LPs and
28 Juicers cannot set their own work hours (but rather must work late at night and early in the

1 morning during specified hours set by Lime or else face pay reduction).

2 16. Lime also cannot satisfy the “app-based driver” exception to *Dynamex* and Labor
3 Code § 2775 set forth by Proposition 22, codified in Bus. & Prof. Code § 7488 et seq. Section
4 7463 defines “app-based” driver as “an individual who is a DNC courier, TNC driver, or TCP
5 driver or permit holder; and for whom the conditions set forth in subdivisions (a) to (d), inclusive,
6 of Section 7451 are satisfied.” Lime cannot satisfy the requirement of § 7451(a) that Lime “not
7 unilaterally prescribe specific dates, times of day, or a minimum number of hours” because, as set
8 forth above, Lime does specifically require that LPs and Juicers perform their work during
9 specified hours as part of their BLT standards, or else face pay reduction. Further, Lime, LPs,
10 and Juicers do not meet any of the definitions in Section 7463. Lime is not a “DNC” or “delivery
11 network company.” Section 7463(f) defines this as “a business entity that maintains an online-
12 enabled application or platform used to facilitate delivery services. . .” (emphasis added). Section
13 7463(h) defines “delivery services” as:

14 the fulfilment of delivery requests, meaning the pickup from any location of any
15 item or items and the delivery of the items using a passenger vehicle, bicycle,
16 scooter, walking, public transportation, or other similar means of transportation,
17 to a location selected by the customer located within 50 miles of the pickup
18 location.... Delivery services may include the selection, collection, or purchase of
19 items by a DNC courier provided that those tasks are done in connection with a
20 delivery that the DNC courier has agreed to deliver.

21 Bus. & Prof. Code § 7463(h) (emphasis added).) “DNC courier” is defined by § 7463(g) as
22 “individual who provides delivery services through a DNC’s online-enabled application or
23 platform.” Under these definitions, Lime is not a DNC and LPs and Juicers are not DNC couriers
24 because Lime’s application is not used to facilitate delivery services nor do LPs and Juicers
25 provide delivery services. LPs’ and Juicers’ primary task is to recharge electric scooters, not to
26 transport them. Moreover, unlike delivery drivers, such as Postmates drivers or GrubHub drivers,
27 LPs and Juicers do not pick up or deliver merchandise to customers. LPs and Juicers interact
28 only with Lime, not Lime’s customers. LPs and Juicers are not delivering items “to a location
selected by the customer,” as required by § 7463(h). Indeed, any argument by Lime that Prop 22
applies to LPs and Juicers would require that Lime be viewed simultaneously as both the DNC

1 and the customer. Unlike the workers falling within the scope of Prop 22, LPs and Juicers
2 perform services directly for Lime and do not interface with the public. Further, unlike ride-share
3 drivers, such as Uber and Lyft, LPs and Juicers do not carry passengers. *Cf.* Bus. & Prof. Code §
4 7463(o).

5 17. On information and belief, Lime's misclassification of LPs and Juicers is and has
6 been demonstrably willful. Lime did not simply classify thousands of its workers as independent
7 contractors through some inadvertent means. Lime initially chose to classify the workers that
8 charge its scooters as independent contractors as a foregone conclusion irrespective of the true
9 facts concerning the work they performed and their status as independent businesses. Lime then
10 repeatedly reaffirmed that decision over a period of years, even though the governing legal
11 landscape made that decision untenable to begin with and then more and more untenable as the
12 years progressed. Lime purposefully created a lengthy contract at the beginning of the Juicer
13 Program that classified Juicers as independent contractors. On information and belief, many of
14 Lime's officers and employees were directly involved in that process and were assisted by
15 outside counsel, retained to assist in the papering of Lime's foregone conclusion that Juicers
16 would be treated as independent contractors irrespective of the true facts. Almost the entirety of
17 Lime's Juicer Program in California occurred **after** the Supreme Court's *Dynamex* decision,
18 which made clear that Lime's classification scheme was unlawful. On information and belief,
19 Lime revisited that classification scheme after the *Dynamex* decision, again with the assistance
20 of outside counsel, and decided to continue it. On information and belief, Lime's Juicer contract
21 was filled with purported representations Juicers were required to make regarding their
22 purported status as independent businesses, which Lime never bothered to confirm, even though
23 the contract gave Lime the power to do so, and which Lime knew to be largely if not entirely
24 untrue. On information and belief, Lime itself did not even sign these contracts, in many or all
25 instances. On information and belief, Lime adopted a pattern and practice of not bothering to
26 individually evaluate any prospective LP or Juicer worker before hiring them, instead being
27 content to engage as an independent contractor anyone willing to agree to the terms of Lime's
28 boilerplate contract. Lime's conduct spurred numerous complaints to the Labor & Workforce

1 Development Agency and at least four class action or PAGA representative lawsuits. In January
2 2020, when AB 5, which codified *Dynamex*, became effective, Lime purported to terminate the
3 Juicer Program in its entirety, replacing it with the “Logistics Provider” program. Yet, on
4 information and belief, the work remained the same, was largely continued to be performed by
5 the same people, and the new program was a distinction without a difference that Lime
6 deliberately intended to once again falsely paper over the true facts of the work performed by
7 LPs and Juicers in an effort to minimize its liability in pending lawsuits. On information and
8 belief, Lime’s purportedly new program again required workers to agree to essentially the same
9 purported representations regarding their purported status as independent businesses, which
10 Lime again knew to be largely untrue. Moreover, on information and belief, in each iteration of
11 its contracts with Juicers and Logistics Providers, Lime required workers to agree to mandatory
12 arbitration and class action waiver clauses, in an effort to evade liability. Indeed,
13 notwithstanding that PAGA claims are immune from arbitration under binding California
14 Supreme Court precedent and that mandatory arbitration in the employment context became
15 illegal in California on January 1, 2020, under Labor Code § 432.6, Lime nonetheless persisted
16 even after that date to unlawfully require in its contracts with Logistics Providers that they agree
17 to mandatory individual arbitration for all claims, including PAGA claims, as part of its willful
18 misclassification scheme and efforts to evade liability.

19 **Plaintiff’s Facts**

20 18. Like all other of Lime’s California-based chargers, Plaintiff was hired as an LP
21 and Juicer by Lime and improperly classified as an independent contractor when he should have
22 been classified as an employee. Mr. Fuhrer began work collecting, charging, and redeploying
23 scooters for Lime in early 2018. Initially, Lime called his role a “Juicer”. In early 2020, Lime
24 began calling his role a “Logistics Provider” and purported to terminate his role as a Juicer. The
25 work remained the same. Mr. Fuhrer remains a Logistics Provider for Lime. Mr. Fuhrer
26 performed work for Lime in many instances over the past few years and throughout the relevant
27 limitations periods, attempting to locate, collect, recharge, and re-release scooters, including
28 recently in and around Santa Barbara and other Southern California areas. Lime controlled each

1 step in the process of his work. The app instructed him where depleted scooters were located.
2 Once charged, the app pinpointed specific locations where he was required to release scooters, in
3 sets of three, and by certain times of day. In order to charge the scooters at home, Lime required
4 him to use specific equipment that he was required to obtain from Lime at his own expense.
5 Lime did not pay him for all time worked, and in some instances did not pay him at all. Rather,
6 Lime paid him a flat fee, generally \$5, for each scooter that he successfully collected, recharged,
7 and released back onto the street. In many instances, however, collecting a particular scooter
8 turned out, only after a significant expenditure of time, not to be possible or took an excessive
9 amount of time, due to errors in the Lime app, interference from other chargers (such as when the
10 scooter was already collected by another charger by the time of his arrival), barriers (such as
11 when a scooter has been taken into a customer's home or is behind a fence), because a scooter
12 was broken, or other reasons. He therefore spent significant time working for Lime in an attempt
13 to locate, collect, and recharge scooters, only to sometimes be unsuccessful at collecting any, or
14 to spend an excessive amount of time collecting only one or a few scooters, earning little to no
15 money for all his time worked. Even generally absent significant problems or interference, the
16 process of locating, travelling to, collecting, recharging, and releasing a scooter back to a
17 designated location would take hours, with him earning potentially only \$5. In numerous
18 instances, Mr. Fuhrer worked in excess of 5 hours per day, 8 hours per day, and/or 40 hours per
19 week, and was not paid for all time worked, was not provided meal or rest breaks or
20 compensation for either, was not paid overtime, and was not reimbursed for business expenses.
21 Nor did Lime pay him all wages or other payments due at termination at the time Lime purported
22 to terminate his role as a Juicer.

23 **Overview of Labor Law Violations**

24 19. Lime's willful misclassification of its charger workforce and other practices set
25 forth herein give rise to numerous Labor Code violations, including: Willful misclassification
26 and related penalties (Cal. Labor Code § 226.8); failure to comply with the requirements for
27 piece-rate basis compensation, including failure to compensate for non-productive time and rest
28 and recovery periods separate from any piece-rate compensation, and failure to comply with the

1 wage statement requirements for piece-rate compensation (Cal. Labor Code § 226.2); failure to
2 pay all wages and minimum wages and minimum wage violations (Cal. Lab. Code §§ 1194,
3 1194.2, 1197, 1197.1; California Minimum Wage Order MW-2019, Wage Order 4-2001); failure
4 to pay overtime wages (Cal. Lab. Code § 1194; MW-2019, Wage Order 4-2001); improper
5 deductions and paying less than the agreed-upon wage scale (Cal. Lab. Code §§ 221-224); failure
6 to provide meal and rest periods (Cal. Lab. Code § 226.7 and 512); failure to reimburse expenses
7 or losses incurred as a result of performing work duties (Cal. Lab. Code §§ 450, 2802); waiting
8 time penalties (Cal. Lab. Code § 203); inaccurate wage statements (Cal. Lab. Code § 226, 226(a),
9 226.3); failure to pay all wages by the appropriate pay period (Cal. Lab. Code § 204); PAGA
10 penalties (Cal. Lab. Code §§ 2699 et seq., 210, 216, 225.5, 226(a), 226.7, 226.8, 558, 1174, 1197,
11 1197.1 1199). The facts regarding each of these violations are set forth in detail below.

12 Failure to Comply with Piece-Rate Compensation Requirements

13 20. Labor Code § 226.2, numerous California Supreme Court and Court of Appeal
14 decisions, and numerous Opinion Letters from the DLSE make clear that any piece-rate
15 compensation scheme must adequately compensate workers for, among other things,
16 nonproductive time, rest and recovery periods, travel time, and other de minimis tasks.

17 21. The legislature has codified California law regarding piece-rate compensation in
18 Labor Code § 226.2. The statute requires that employees “shall be compensated for . . .
19 nonproductive time ***separate from any piece-rate compensation.***” Labor Code § 226.2(a)(1)
20 (emphasis added). Section 226.2 defines “other nonproductive time” as time under the
21 employer’s control, exclusive of rest and recovery periods, that is not directly related to the
22 activity being compensated on a piece-rate basis.” Labor Code § 226.2. The statute also makes
23 clear that employees “shall be compensated for rest and recovery periods . . . ***separate from any***
24 ***piece-rate compensation.***” Labor Code § 226.2(a)(1) (emphasis added). Section 222.6 further
25 requires that itemized wage statements separately state “[t]he total hours of compensable rest and
26 recovery periods, the rate of compensation, and the gross wages paid for those periods during the
27 pay period.” Labor Code § 226.2(a)(2)(A). The wage statements must also state “the total hours
28 of other nonproductive time, . . . the rate of compensation, and the gross wages paid for that time

1 during the pay period.” Labor Code § 226.2(a)(2)(B). Further, the statute requires that the pay
2 rate for rest periods must be “***no less than the higher***” of either the applicable minimum wage or
3 “[a]n hourly rate determined by dividing the total compensation for the workweek [excluding rest
4 period pay and overtime] by the total hours worked during the workweek.” Labor Code §
5 226.2(a)(3)(A). Section 226.2(a)(4) further states that nonproductive time must be compensated
6 at an hourly rate not less than the minimum wage. The amount of nonproductive time may be
7 determined either through actual records or the employer’s reasonable estimates. *Id.* §
8 226.2(a)(5).

9 22. Labor Code Section 226.2 codified existing California case law regarding piece-
10 rate compensation schemes and their failure to compensate employees for all hours worked. *See*
11 *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013); *see also Vaquero v.*
12 *Stoneledge Furniture*, 9 Cal. App. 4th 98 (2017); *Bluford v. Safeway Stores, Inc.*, 216 Cal. App.
13 4th 864, 871-72 (2013); *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314 (2005); *Quezada v. Con-*
14 *Way Freight, Inc.*, 2012 WL 2847609 (N.D. Cal. July 11, 2012); *Ridgeway v. Wal-Mart Stores*,
15 2015 WL 3451966 (N.D. Cal. May 28, 2015).

16 23. California law also makes clear that an employer must compensate its workers for
17 any travel commuting time that is either undertaken at the employer’s direction or control, or that
18 is excessive, or which involves the transportation of any goods, equipment, or materials for the
19 company. *See Morillion v. Royal Packing*, 22 Cal. 4th 575 (2000); *Rutti v. Lojack Corp.*, 596
20 F.3d 1046 (9th Cir. 2010); *Slavkov v. Fast Water Heater Partners I, LP*, Case No. 14-CV-04324-
21 JST, 2015 WL 8482141, at *3 (N.D. Cal. Dec. 10, 2015); *Armenta v. Osmose, Inc.*, 135 Cal. App.
22 4th 314, 322–24 (2005); *see also* DLSE 4/22/2003 Opinion Letter; DLSE 2/21/02 Opinion Letter.
23 In addition to these long-established requirements that piece-rate compensation schemes
24 separately compensate workers for rest periods, nonproductive time, and travel, the California
25 Supreme Court’s decision in *Troester v. Starbucks Corporation*, 421 P.3d 1114 (2018) makes
26 clear that an employer cannot rely on the federal de minimis doctrine as any sort of defense.

27 24. Here, Lime’s compensation of its LP and Juicer workforce violates all of these
28 provisions regarding piece-rate compensation. Lime does not compensate chargers for

1 nonproductive time or for rest and recovery periods separate from any piece rate compensation, or
2 even track that time. As referenced above, LPs or Juicers inevitably incur significant
3 nonproductive time working for Lime that goes entirely uncompensated. Lime only pays LPs or
4 Juicers a flat fee, generally \$5, for each scooter that a charger successfully collects, recharges, and
5 releases back onto the street. In many instances, however, collecting a particular scooter is not
6 possible or takes an excessive amount of time, due to errors in the Lime app, interference from
7 other chargers, barriers, because a scooter is broken, or other reasons. LPs or Juicers may
8 therefore spend significant time working for Lime in an attempt to locate, collect, and recharge
9 scooters, only to be unsuccessful and therefore uncompensated. Or to spend an excessive amount
10 of time in the pursuit of collecting many scooters, only to collect one or a few scooters, earning
11 no compensation for their time spent working for Lime that did not directly result in the
12 collection, recharging, and release of a particular scooter. Lime also does not specifically
13 compensate LPs or Juicers for time spent monitoring and waiting for scooters to recharge, or
14 travelling between their home and different scooter locations, while they are transporting
15 company property. LPs or Juicers also often work numerous hours for Lime, without any
16 compensation for rest periods or meal periods separate from the piece-rate compensation. Wage
17 statements issued to LPs or Juicers do not separately state the total hours of compensable rest and
18 recovery periods, or total hours of nonproductive time, or any rate of compensation for either.
19 Accordingly, Lime's payment practices violate Labor Code Section 226.2.

20 Failure to Pay All Wages/Minimum Wage Violations

21 25. For similar reasons, Lime's payment practices also fail to pay LPs or Juicers the
22 applicable state minimum wage for all hours worked. Lime only compensates LPs or Juicers on a
23 piece-rate basis for their work, generally only \$5 dollars per scooter successfully collected,
24 recharged, and rereleased, regardless of how long that process takes, regardless of whether this
25 compensation results in the LP or Juicer being paid less than the hourly minimum wage, and
26 without any compensation at all for nonproductive time, as described above. LPs' or Juicers'
27 compensation is not at all derivative of how many hours the charger works. As set forth above,
28 LPs or Juicers spend significant amounts of nonproductive time working for Lime, benefitting

1 Lime, and under the control of Lime, all of which goes entirely uncompensated. Even in
2 instances where a charger is partially compensated for their time, the piece-rate compensation
3 may end up with the LP or Juicer being paid less than the minimum wage.

4 26. California law prescribes that it is an automatic minimum wage violation when an
5 employee works but is not compensated for each and every hour worked. *See Gonzalez v.*
6 *Downtown L.A. Motors*, 215 Cal. App. 4th 36, 49-50 (2014); Labor Code § 226.2(a)(4); *Armenta*
7 *v. Osmose, Inc.* (2005) 215 Cal. App. 4th 314, 323-324 (2005); see also Labor Code §§ 221-23.
8 Notably, averaging wages over the workweek to meet minimum wage obligations is not permitted
9 under the California Labor Code.

10 Failure to Pay All Overtime Wages Earned

11 27. Lime also fails to pay LPs or Juicers all the overtime pay for which they are
12 entitled, or indeed any overtime pay at all. Because Lime does not track or pay LPs or Juicers for
13 the non-piece rate hours they work, Lime fails to accurately assess how much is due in overtime
14 wages to the LPs or Juicers and, thus, fails to pay accurate overtime wages.

15 Meal and Rest Period Violations

16 28. Lime also does not provide meal and rest periods in accordance with California
17 law. Employees paid on a piece-rate system must also be separately compensated for rest
18 periods, which Lime fails to do. *See* Labor Code § 226.2(a)(1); 226.2(a)(3)(A); *Bluford v.*
19 *Safeway Stores, Inc.*, 216 Cal.App.4th 864 (2013); *Cardenas v. McLane FoodServices, Inc.*, 796
20 F.Supp.2d 1246, 1252 (C.D. Cal. 2011) (piece-rate pay system that did not separately pay truck
21 drivers for non-driving duties and rest periods violates California law requiring compensation for
22 each hour worked); *Reinhardt v. Gemini Motor Transport*, 869 F.Supp.2d 1158, 1168 (E.D. Cal.
23 2012) (piece-rate pay system that did not separately pay truck drivers for non-driving duties
24 violates California law requiring compensation for each hour worked).

25 Failure to Reimburse for Business Expenses

26 29. Lime also fails to reimburse LPs or Juicers with respect to the equipment and tools
27 they need to perform their work. LPs or Juicers require specialized charging equipment, which
28 Lime requires chargers to obtain from Lime at their own expense. LPs or Juicers are further

1 required to supply their own electricity to charge the scooters without reimbursement. Lime also
2 expects LPs or Juicers to provide their own vehicles and gas in the course of collecting scooters,
3 without reimbursement. Lime also does not reimburse workers for the costs associated with the
4 use of a smartphone, which is required to perform the work of a LP or Juicer.

5 30. The other alleged violations, including inaccurate wage statements and waiting
6 time penalties, are largely derivative of the failure to pay minimum wage and overtime violations
7 as well as the failure to provide meal and rest periods violations

8 31. Plaintiff further believes that additional violations may be discovered and therefore
9 reserves his right to allege additional violations of the law as investigation and discovery warrant.
10 In the event Plaintiff discovers additional violations through the discovery process, Plaintiff will
11 seek to amend the operative complaint as necessary.

12 32. On April 12, 2021, Plaintiff submitted notice to the California Labor and
13 Workforce Development Agency (“LWDA”) and Defendant informing them of Defendant’s
14 alleged Labor Code violations pursuant to PAGA. A true and correct copy of the notice is
15 attached hereto as Exhibit 1 and is incorporated herein by reference. To date, the LWDA has not
16 provided notice of whether it intends to investigate the alleged violations. Therefore Plaintiff has
17 the right to pursue his claims under PAGA in a representative capacity pursuant to Labor Code §
18 2699.3.

19 **PAGA COLLECTIVE**

20 33. The proposed PAGA Collective consists of all current and former individuals
21 hired by Defendant as “Logistics Providers” (previously known as “Juicers”) for its Lime brand
22 electric scooter operations in California since January 2020 and during the relevant statute of
23 limitations period, tolled as appropriate based on Emergency Rule 9 of the Judicial Council’s
24 Emergency Rules Related to COVID-19 and any other applicable statutes or rules, doctrines, or
25 pending related litigation. Expressly excluded from this action are any claims for PAGA
26 penalties released by settlement of *In re Neutron Wage & Hour Cases*, San Francisco Superior
27 Court Case No. CJC-19-005044, Judicial Council Coordination Proceeding Case No. 5044, the
28 release in which expressly does not extend to any claims related to Lime’s use of “Logistics

Providers” beginning in or after January 2020. Plaintiff asserts that members of the PAGA Collective are properly classified as “employees” as the term is used in the Labor Code and IWC Wage Orders regulating wages, hours, and working conditions in the State of California. A more precise definition of the PAGA Collective may be determined after further investigation and discovery. Plaintiff thus reserves the right to redefine the PAGA Collective in accordance with California law.

CLASS ACTION ALLEGATIONS

34. Plaintiff brings his class claims pursuant to Cal. Civ. Pro. Code § 382 on behalf of himself and a class of all others similarly situated, defined as follows:

All persons who either were hired by Defendant or performed work for Defendant as a “Logistics Provider” or “Juicer” for Defendant’s Lime brand electric scooter operations in California since January 1, 2020.

35. Plaintiff reserves the right under California Rule of Court 3.765 to amend or modify the class definition with greater particularity or further division into subclasses or limitation to particular issues.

36. This action has been brought and may be maintained as a class action under California Code of Civil Procedure Section 382 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable, as described further below:

- a. Numerosity: The potential members of the class as defined are so numerous that joinder of all members of the class is impracticable. The precise number of workers at issue has not been determined, and the membership of the entire class is unknown to Plaintiff at this time; however, it is readily ascertainable via inspection of the personnel records and other documents maintained by Defendant.
- b. Commonality: There are questions of law and fact common to the Plaintiff and the class that predominate over any questions affecting only the individual members of the class. The common questions of law and fact include, but are not limited to, the following:
 - i. Whether Defendant misclassified its workforce of Logistics Providers

- 1 and/or Juicers as independent contractors rather than employees;
- 2 ii. Whether Defendant's alleged misclassification was willful;
- 3 iii. Whether LPs or Juicers are free from the control and direction of Lime in
- 4 connection with the performance of their work, both under the contract for
- 5 the performance of the work and in fact;
- 6 iv. Whether LPs or Juicers perform work that is outside the usual course of the
- 7 Lime's business;
- 8 v. Whether LPs or Juicers are customarily engaged in an independently
- 9 established trade, occupation, or business;
- 10 vi. Whether Lime denied Plaintiff and the class all of the wages, including
- 11 minimum and overtime wages, to which they were entitled pursuant to the
- 12 California Labor Code, the California Industrial Welfare Commission's
- 13 ("IWC") Wage Orders, and all other applicable Employment Laws and
- 14 Regulations;
- 15 vii. Whether Lime failed to provide Plaintiff and the class with meal and rest
- 16 periods as required by law;
- 17 viii. Whether Lime failed to provide Plaintiff and the Class with accurate
- 18 itemized statements;
- 19 ix. Whether Lime owes Plaintiff and the class waiting time penalties pursuant
- 20 to California Labor Code § 203;
- 21 x. Whether Lime violated California Labor Code § 204 by failing to pay all
- 22 wages earned in a timely manner;
- 23 xi. Whether Lime engaged in unfair business practices under § 17200 of the
- 24 California Business and Professions Code;
- 25 xii. Whether Lime acted with, malice, oppression and fraud thereby justifying
- 26 the award of punitive and exemplary damages;
- 27 xiii. The effect upon and the extent of damages suffered by Plaintiff and the
- 28 Class and the appropriate amount of compensation; and

xiv. Whether issuance of declaratory relief about the invalidity of Lime's purported arbitration agreements and classification scheme is appropriate.

- c. Typicality. The claims of Plaintiff are typical of the claims of the class. Plaintiff and all other similarly situated employees sustained injuries and damages arising out of and caused by Lime's common course of conduct in violation of statutes, as well as regulations that have the force and effect of law, as alleged herein.
- d. Adequacy of Representation. Plaintiff will fairly and adequately represent the interests of the class. Counsel who represent Plaintiff are experienced and competent in litigating employment class actions.
- e. Superiority of Class Action. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Plaintiffs is not practicable, and questions of law and fact common to Plaintiffs predominate over any questions affecting only individual Plaintiffs. Plaintiff and the class have been damaged and are entitled to recovery by reason of Lime's illegal policies or practices of misclassifying workers and failing to compensate Plaintiff and the class properly. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

37. The nature of this action and the nature of the laws applicable to Plaintiff and the class make the class action format a particularly efficient and appropriate procedure to afford relief to Plaintiff and the class. Further, this case involves a corporate employer and a large number of individual workers possessing claims with common issues of law and fact. If each worker were required to file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual plaintiff with its vastly superior financial and legal resources. Requiring each class member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to pursue an action against their present and/or former employer for an appreciable and justifiable fear of retaliation and permanent

1 damage to their careers at present and/or subsequent employment. Proof of a common business
2 practice or factual pattern, of which the named Plaintiff experienced, is representative of the class
3 mentioned herein and will establish the right of each of the members of the class to recovery on
4 the claims alleged herein.

5 38. The prosecution of separate actions by the individual class members, even if
6 possible, would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications
7 with respect to the individual class members against the defendants herein; and/or (b) legal
8 determinations with respect to individual class members which would, as a practical matter, be
9 dispositive of the other class members' claims who are not parties to the adjudications and/or
10 would substantially impair or impede the ability of class members to protect their interests.
11 Further, the claims of the individual members of the class are not sufficiently large to warrant
12 vigorous individual prosecution considering all of the concomitant costs and expenses attending
13 thereto. Plaintiff is unaware of any difficulties that are likely to be encountered in the
14 management of this action that would preclude its maintenance as a class action.

15 **FIRST CAUSE OF ACTION**
16 **(By Plaintiff in his Representative Capacity against Defendant and Does 1-10)**
17 **PRIVATE ATTORNEYS GENERAL ACT OF 2004**
18 **(Labor Code § 2698 *et seq.*)**

19 39. Plaintiff hereby incorporates each of the preceding paragraphs as if fully set forth
20 herein.

21 40. Pursuant to PAGA, any provision of the Labor Code allowing for a civil penalty to
22 be assessed and collected by the LWDA, or any of its departments, divisions, commissions,
23 boards, agencies, or employees, for a Labor Code violation, may be recovered through a civil
24 action brought by an aggrieved employee on behalf of himself or herself, and other current or
25 former employees. Labor Code § 2699. Such civil penalties are in addition to any other relief
26 provided under the Labor Code and must be allocated seventy-five percent (75%) to the LWDA
27 and twenty-five percent (25%) to the aggrieved employees pursuant to section 2699(i).

28 41. During all, or a portion of, the one-year period before Plaintiff filed notice of his
claims with the LWDA, Plaintiff, and each of the other aggrieved employees, were employed by

1 Defendant in the State of California.

2 42. Plaintiff asserts that Defendant willfully misclassified him and the other aggrieved
3 employees as independent contractors and/or exempt employees when they should instead have
4 been properly classified as non-exempt employees and are therefore subject to the protections of
5 the Labor Code and relevant IWC Wage Orders.

6 43. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by
7 Defendant within the past year and suffered one or more violations of the Labor Code.

8 44. Plaintiff has complied with the notice requirements outlined in Labor Code
9 §2699.3. On April 12, 2021, Plaintiff submitted notice to the LWDA and Defendant informing
10 them of Defendant’s alleged Labor Code violations pursuant to PAGA. *See* Exhibit 1. The
11 LWDA had 65 days to provide notice of whether it intended to investigate the alleged violations.
12 To date, the LWDA has not provided notice of whether it intends to investigate the alleged
13 violations. Plaintiff thus has the right to pursue, and does pursue, his claims under PAGA in a
14 representative capacity pursuant to Labor Code § 2699.3.

15 45. As set forth herein, Defendant has committed, and continues to commit, numerous
16 violations for which the Labor Code entitles Plaintiff, in his representative capacity, to recover,
17 on behalf of the aggrieved employees and the general public, attorneys’ fees and costs, as well as
18 penalties against Defendant for the alleged Labor Code violations, described herein.

19 46. Plaintiff, in his representative capacity on behalf of the PAGA Collective, is
20 entitled to and thus seeks to recover civil penalties for his PAGA claim through a representative
21 action based on at least the follow violations of the Labor Code provisions:

- 22 a. Willfully misclassifying the aggrieved employees as independent contractors in
23 violation of Labor Code §§ 226.8(a) and 3353;
- 24 b. Improperly classifying the aggrieved employees as exempt employees in violation
25 of California Law and relevant IWC Wage Orders;
- 26 c. Failure to pay minimum wages and overtime compensation in violation of Labor
27 Code §§ 204, 226.2, 210, 510, 1194, 1197, 1197.1, 1198, and relevant IWC Wage
28 Orders;

- d. Failure to provide legally compliant meal periods or compensation in lieu thereof in violation of Labor Code § 226.7, 512 and relevant IWC Wage Orders;
- e. Failure to provide legally compliant rest periods or compensation in lieu thereof in violation of Labor Code §226.7 and relevant IWC Wage Orders;
- f. Failure to reimburse for necessary work expenses in violation of Labor Code §§ 2800, 2802, and relevant IWC Wage Orders, and in violation of § 226.8(a)(2);
- g. Failure to pay wages owed and required waiting time penalties in violation of Labor Code § 201-203;
- h. Failure to furnish accurate itemized wage statements in violation of Labor Code § 226, 226.2, 226.3, and relevant IWC Wage Orders, including the failures to comply with the piece-rate compensation requirements of Labor Code §226.2, detailed above;
- i. Failure to maintain accurate records in violation of Labor Code §§ 226(a), 226.3, 1174, and relevant IWC Wage Orders.

47. For violations of Labor Code §§ 510 and 512, in addition to any other recovery provided by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period for each underpaid employee for the initial violation and \$100 per pay period for each under paid employee for each subsequent violation of any section of the Labor Code Division 2, Part 2, Chapter 1, or any provision regulating hours and days of work in any order of the IWC. Labor Code § 558 also requires that any recovery of wages be paid to the affected employee. Therefore Plaintiff and the PAGA Collective are entitled to and do seek such civil penalties.

48. Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation for violations of Labor Code § 226(a) and 226.2. Plaintiff and the PAGA Collective are thus entitled to and seek the described civil penalty.

49. Labor Code § 225.5 imposes a civil penalty of \$100 for each failure to pay each employee, and \$200 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld for each subsequent violation, or any willful or intentional violation of Labor

1 Code § 223. Therefore, Plaintiff and the PAGA Collective are entitled to and do seek such civil
2 penalties.

3 50. Labor Code § 226.8(b) imposes a civil penalty of not less than \$5,000 and not
4 more than \$15,000 for each violation of Labor Code § 226.8(a). Additionally, where, as here, an
5 employer has engaged in or is engaging in a pattern of practice of violation of Labor Code §
6 226.8(a), pursuant to Labor Code § 226.8(c), a civil penalty of not less than \$10,000 and not more
7 than \$25,000 is imposed for each violation. Section 226.8(a)(2) imposes similar penalties for
8 imposition of charges or fees on a misclassified employee. Therefore, Plaintiff and the PAGA
9 Collective are entitled to and do seek such civil penalties.

10 51. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per
11 employee for the initial violation, and \$200 per pay period, per employee for each subsequent
12 violation for all Labor Code provisions for which a civil penalty is not specifically provided,
13 including but not limited to Labor Code §§ 201, 202, 203, 204, 223, 226, 226.8, 266.8, 510, 512,
14 1174, 1194, 1197, 1191.1, 1198, 2751, 2800, and 2802. Plaintiff and the PAGA Collective are
15 therefore entitled to and do seek the above described civil penalty.

16 52. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action
17 brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs.
18 As such, Plaintiff, in his representative capacity on behalf of the PAGA Collective, is entitled to
19 and does seek attorneys' fees and costs.

20 53. Plaintiff and the PAGA Collective are further entitled to and seek any and all other
21 applicable penalties authorized by PAGA, including but not limited to any and all different or
22 additional penalties authorized pursuant to Cal. Lab. Code §§ 2699 et seq., as well as §§ 201-203,
23 204, 210, 216, 221-224, 225.5, 226, 226.7 226.8, 558, 1194, 1194.2, 1197, 1197.1, 1199, and
24 2802.

25 54. Plaintiff, in his representative capacity on behalf of the PAGA Collective, is
26 entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor Code § 218.5
27 and Civil Procedure Code § 1021.5.

28 55. Plaintiff further requests such additional relief as described in the prayer below.

SECOND CAUSE OF ACTION
(By Plaintiff and the Class against Defendant and Does 1-10)
FAILURE TO PAY FOR ALL HOURS WORKED AND MINIMUM WAGE
VIOLATIONS
(Labor Code §§ 216, 1194, 1194.2 and 1197)

56. Plaintiff hereby incorporates each of the preceding paragraphs as if fully set forth herein.

57. Plaintiff brings this action to recover unpaid compensation for all hours worked, defined by the applicable IWC Wage Order as the time during which an employee is subject to the control of the employer, including all the time the employee is suffered or permitted to work, whether or not required to do so.

58. Lime failed to compensate Plaintiff and the class for all hours worked and failed to pay Plaintiff and the class the applicable minimum wage for all hours worked. Lime's conduct violates, inter alia, Labor Code sections 216, 1194 and 1197.

59. California law prescribes that it is an automatic minimum wage violation when an employee works but is not compensated for each and every hour worked. *See Armenta v. Osmose, Inc.* (2005) 215 Cal. App. 4th 314, 323-324. In *Gonzalez v. Downtown L.A. Motors*, 215 Cal. App. 4th 36, 49-50 (2014), the court held that employees paid on a piece-rate system must be separately compensated for non-piece work in order to comply with California's minimum wage statutes. Averaging wages over the workweek to meet minimum wage obligations is not permitted under the California Labor Code.

60. Plaintiff is informed and believes, and thereon alleges that the failure of Lime to fully compensate Plaintiff and the class for all wages earned was willful, purposeful, and unlawful and done in accordance with the policies and practices of Lime's operations. Lime knew or should have known that Plaintiff and the class were working these hours.

61. As a proximate cause of the aforementioned violations, Plaintiff and the class have been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdictional minimum of this Court. Plaintiff and the class are entitled to recover the unpaid balance of wages owed, plus interest on that amount, liquidated damages pursuant to Labor Code

1 section 1194.2, and penalties. Plaintiff and the class are also entitled to recover reasonable
2 attorney fees and costs of suit pursuant to Labor Code § 1194 *et. seq.*

3
4 **THIRD CAUSE OF ACTION**
5 **(By Plaintiff and the Class against Defendant and Does 1-10)**
6 **FAILURE TO PAY OVERTIME COMPENSATION**
7 **(Labor Code § 1194)**

8 62. Plaintiff hereby incorporates each of the preceding paragraphs as if fully set forth
9 herein.

10 63. Lime required Plaintiff and the class to work more than eight (8) hours per day,
11 twelve (12) hours per day, and/or forty (40) hours per week.

12 64. Lime failed to fully compensate Plaintiff and the class for all wages earned,
13 including overtime wages. Lime fails to pay LPs or Juicers all the overtime pay for which they
14 are entitled.

15 65. Plaintiff is informed and believes and thereon alleges that the failure of Lime to
16 fully compensate Plaintiff and the class for all wages earned and overtime work was willful,
17 purposeful, and unlawful and done in accordance with the policies and practices of Lime's
18 operations.

19 66. As a proximate cause of the aforementioned violations, Plaintiff and the class have
20 been damaged in an amount according to proof at time of trial, but in an amount in excess of the
21 jurisdictional minimum of this Court. Plaintiff and the class are entitled to recover the unpaid
22 balance of wages owed, penalties, including penalties available pursuant to California Labor
23 Code Section 558, plus interest, reasonable attorney fees and costs of suit according to the
24 mandate of California Labor Code § 1194 *et. seq.*

25 **FOURTH CAUSE OF ACTION**
26 **(By Plaintiff and the Class against Defendant and Does 1-10)**
27 **FAILURE TO PAY MEAL AND REST PERIOD COMPENSATION**
28 **(Labor Code §§ 226.2 226.7, 512)**

67. Plaintiff hereby incorporates each of the preceding paragraphs as if fully set forth
herein.

68. Lime failed to provide Plaintiff and the class with uninterrupted, work-free 30-minute meal periods for shifts in excess of five (5) hours worked and to compensate them for these missed meal periods as required by law.

69. Lime, throughout Plaintiff's and the class's employment with Lime, failed to give Plaintiff and the class rest breaks as required by law and failed to compensate them for missed rest breaks. Lime does not provide rest periods in accordance with California law. Employees paid on a piece-rate system must also be separately compensated for rest periods, which Lime fails to do. See *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864; *Cardenas v. McLane FoodServices, Inc.* (C.D.Cal.2011) 796 F.Supp.2d 1246, 1252 (piece-rate pay system that did not separately pay truck drivers for non-driving duties and rest periods violates California law requiring compensation for each hour worked); *Reinhardt v. Gemini Motor Transport* (E.D.Cal.2012) 869 F.Supp.2d 1158, 1168 (piece-rate pay system that did not separately pay truck drivers for non-driving duties violates California law requiring compensation for each hour worked).

70. Plaintiff is informed and believes, and thereon alleges that the failure of Lime to provide meal and rest breaks and to compensate Plaintiff and the class for these missed meal and rest breaks was willful, purposeful, and unlawful and done in accordance with the policies and practices of Lime's operations.

71. As a proximate cause of the aforementioned violations, Plaintiff and the class have been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdictional minimum of this Court. Plaintiff and the class are entitled to recover the unpaid balance of wages owed, penalties, including penalties available pursuant to California Labor Code Sections 226, 226.7 and 558, plus interest, reasonable attorneys' fees and costs of suit according to the mandate of California Labor Code §§ 218.5 and 1194 *et. seq.*

FIFTH CAUSE OF ACTION
(By Plaintiff and the Class against Defendant and Does 1-10)
FAILURE TO PAY BUSINESS EXPENSES
(Labor Code § 2802)

72. Plaintiff hereby incorporates each of the preceding paragraphs as if fully set forth

1 herein.

2 73. Labor Code § 2802 provides that “An employer shall indemnify his or her
3 employee for all necessary expenditures or losses incurred by the employee in direct consequence
4 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
5 even though unlawful, unless the employee, at the time of obeying the directions, believed them
6 to be unlawful.”

7 74. Labor Code § 2802 requires Lime to reimburse Plaintiff and the class for expenses
8 incurred in the performance of their job duties. Yet Lime does not reimburse workers for the
9 costs of electricity necessary to recharge the scooters, for costs of the vehicle or gas used in the
10 course of travelling around a city to locate and collect scooters by car, for expenses related to the
11 necessary use of a smartphone, for the costs of the specific equipment necessary to charge the
12 scooters, for shipping charges related to the shipment of such equipment from Lime to the LP or
13 Juicer, or for any other expenses incurred in performing their work.

14 75. During the liability period, Lime failed to reimburse Plaintiff and the class for
15 these necessary expenses.

16 76. As a proximate result, Plaintiff and the class have been damaged in an amount to
17 be proven at trial.

18 77. Pursuant to Labor Code § 2802, Plaintiff and the class are entitled to recover from
19 Lime the full amount of business expenses and losses incurred, plus interest, reasonable
20 attorneys’ fees, penalties and costs of suit.

21 **SIXTH CAUSE OF ACTION**
22 **(By Plaintiff and the Class against Defendant and Does 1-10)**
23 **WAITING TIME PENALTIES**
24 **(Labor Code § 203)**

25 78. Plaintiff hereby incorporates each of the preceding paragraphs as if fully set forth
26 herein.

27 79. Pursuant to California Labor Code § 201, if an employer discharges an employee,
28 the wages earned and unpaid at the time of the discharge are due and payable immediately.
Pursuant to California Labor Code § 202, if an employee quits his or her employment, the wages

1 earned and unpaid at the time of the discharge are due and payable within seventy-two (72) hours
2 of the resignation.

3 80. Plaintiff and class members who were either terminated by Lime as Juicers or LPs
4 or have resigned from their employment with Lime have not received the wages and other
5 compensation they rightfully earned.

6 81. Lime willfully refused and continues to refuse to pay class members all wages
7 earned, including overtime compensation, in a timely manner, as required by California Labor
8 Code § 203. Plaintiff therefore requests restitution and penalties as provided by California Labor
9 Code § 203.

10 **SEVENTH CAUSE OF ACTION**
11 **(By Plaintiff and the Class against Defendant and Does 1-10)**
12 **FAILURE TO PAY TIMELY WAGES**
13 **(Labor Code § 204)**

14 82. Plaintiff hereby incorporates each of the preceding paragraphs as if fully set forth
15 herein.

16 83. During the Class period, Labor Code § 204 applied to Lime's employment of
17 Plaintiff and the class. At all times relevant hereto, Labor Code § 204 provided that all wages
18 earned by any employee, such as Plaintiff and the class, in any employment between the 1st and
19 15th days, inclusive, of any calendar month, other than those wages due upon termination of an
20 employee, are due and payable between the 16th and 26th day of the month during which the
21 work was performed. Furthermore, at all times relevant hereto, Labor Code § 204 provided that
22 all wages earned by any employee, such as Plaintiff and the class, in any employment between
23 the 16th and the last day, inclusive, of any calendar month, other than those wages due upon
24 termination of an employee, are due and payable between the 1st and 10th day of the following
25 month.

26 84. During the class period, Lime failed to pay Plaintiff and the class for wages for all
27 hours worked and for all wages earned, and, therefore violated Labor Code section 204.
28 Accordingly, Plaintiff and the class are entitled to recover all damages, penalties and other
remedies available for violation of Labor Code section 204.

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EIGHTH CAUSE OF ACTION
(By Plaintiff and the Class against Defendant and Does 1-10)
FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS
(Labor Code § 226)

85. Plaintiff hereby incorporates each of the preceding paragraphs as if fully set forth herein.

86. Lime failed to provide Plaintiff and the class with accurate itemized statements as required by Cal. Labor Code § 226.

87. Plaintiff and the class have been injured by Lime's intentional failure to provide accurate itemized statements in that Plaintiff and the class will be required to spend more time and greater expense reconstructing their hours worked to determine the wages owed, among other things.

88. Plaintiff is informed and believes and thereon alleges that Lime knowingly and intentionally provided inaccurate and incomplete payroll records. As a result, Plaintiff and the class are entitled to recover the greater of all actual damages and are also entitled to an award of costs and reasonable attorneys' fees, together with penalties as alleged herein.

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NINTH CAUSE OF ACTION
(By Plaintiff and the Class against Defendant and Does 1-10)
UNFAIR BUSINESS PRACTICES
(Bus. & Prof. Code § 17200 *et seq.*)

89. Plaintiff hereby incorporates each of the preceding paragraphs as if fully set forth herein.

90. Lime's violations of employment laws and regulations, as alleged herein, include, among other things: (1) Lime's willful misclassification of workers; (2) Lime's failure and refusal to pay all wages, including overtime wages, earned by Plaintiff and the class pursuant to Lime's illegal pay practices described above; (2) Lime's willful and deliberate failure to provide meal and rest periods as required by law; and (3) Lime's wrongful withholding and conversion of wages and compensation due to Plaintiff and the class. The aforementioned violations constitute unfair business practices in violation of the Unfair Competition Law, California Business & Professions Code § 17200 *et seq.*

91. As a result of Lime’s unfair business practices, Lime has reaped unfair benefits and illegal profits at the expense of Plaintiff, the class, and members of the public. Lime should be compelled to restore such monies to Plaintiff and the class.

92. Lime's unfair business practices entitle Plaintiff and the class to seek preliminary and permanent injunctive relief, including but not limited to, orders that the Lime account for and restore to Plaintiff and the class the compensation unlawfully withheld from them and to properly classify workers as employees rather than independent contractors, as well as restitution.

TENTH CAUSE OF ACTION
(By Plaintiff and the Class against Defendant and Does 1-10)
PUBLIC INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT
(Civ. Pro. Code § 1060 *et seq.*, Labor Code § 432.6(d))

93. Plaintiff hereby incorporates each of the preceding paragraphs as if fully set forth herein.

94. Cal. Civ. Pro. Code § 1060 provides that: “Any person interested under a written instrument, . . . or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, . . . may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time. The declaration may be either affirmative or negative in form and effect, and the declaration shall have the force of a final judgment. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.”

95. An actual case or controversy now exists between Plaintiff and class members, on the one hand, and Lime, on the other hand. Specifically, Lime contends that its LPs and Juicers are properly classified as independent contractors pursuant to purported contracts Lime imposed, whereas Plaintiff and the class contend that they have been willfully misclassified and should

1 instead be properly classified as employees. In addition, Lime contends that its contracts with
2 LPs and Juicers contain arbitration agreements and class action waivers that are enforceable and
3 prohibit Plaintiff and the class from asserting individual or class action claims in court. Plaintiff
4 and the class contend, however, that Lime’s purported arbitration agreements and class action
5 waivers are invalid and unenforceable under *Ishkanian v. CLS Transportation*, 59 Cal. 4th 348
6 (2014) and Labor Code § 432.6. *See also Chamber of Commerce v. Bonta*, 13 F.4th 766 (2021)
7 (Labor Code § 432.6 not preempted by Federal Arbitration Act).

8 96. Labor Code § 432.6 states that “[a] person shall not, as a condition of employment,
9 continued employment, or the receipt of any employment-related benefit, require any applicant
10 for employment or any employee to waive any right, forum, or procedure for a violation of any
11 provision of the ... [Labor] code, including the right to file and pursue a civil action or a
12 compliant with, or otherwise notify, any state agency, or public prosecutor, law enforcement
13 agency, or any court of other governmental entity of any alleged violation.” Section 432.6
14 became effective January 1, 2020. Lime’s imposition of mandatory individual arbitration clauses
15 in its workers’ contracts violate § 432(a). Section 432(d) further provides that “[i]n addition to
16 injunctive relief and any other remedies available, a court may award a prevailing plaintiff
17 enforcing their rights under this section reasonable attorney’s fees.”

18 97. Furthermore, Lime’s contentions and willful misclassification of workers are
19 matters of great public interest in that Lime used its evasion of employment laws as alleged
20 herein to flout its responsibilities to pay federal Social Security and payroll taxes, unemployment
21 insurance taxes and state employment taxes, and provide worker’s compensation insurance, as
22 well as to shirk its tax reporting obligations, among other things. For these and other similar
23 reasons, the California Attorney General may and sometimes does pursue employee
24 misclassification claims against employers on behalf of the public. *See, e.g., People v.*
25 *UberTech, Inc.*, 56 Cal. App. 4th 266 (2020) (affirming injunctive relief regarding Uber’s alleged
26 misclassification of drivers).

27 98. Accordingly, Plaintiff and the class seek public injunctive relief and declaratory
28 judgment providing that Lime’s purported arbitration agreements regarding contracts entered into,

1 modified, or extended after January 1, 2020, are invalid and unenforceable pursuant to Labor
2 Code § 432.6 and *Ishkanian*; and further requiring that Lime properly classify its LPs and/or
3 Juicers as employees rather than independent contractors on a going forward basis and comply
4 with all corresponding obligations, including but not limited to paying federal Social Security and
5 payroll taxes, unemployment insurance taxes and state employment taxes, and providing worker's
6 compensation insurance, and by complying with its tax reporting obligations. Plaintiff further
7 seeks attorneys' fees pursuant to § 432.6(d).

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff Steven Fuhrer, in his representative capacity on behalf of the
10 State of California and the PAGA Collective, and on behalf of the class of similarly situated
11 persons as defined above, prays for judgment against Neutron Holdings, Inc. as follows:

12 1. For an order determining that this action may be maintained as a representative
13 PAGA action as to the first cause of action and as a class action as to the remaining causes of
14 action, with the named Plaintiff as the representative;

15 2. For PAGA civil penalties on behalf of the State of California the PAGA
16 Collective, pursuant to Labor Code §2698 *et seq.* and/or other applicable law, as detailed above,
17 including any wages and benefits due to the PAGA Collective;

18 3. For general and compensatory damages , according to proof;

19 4. For restitution of all monies due to Plaintiff and the class and disgorgement of
20 profits from the unlawful business practices described herein;

21 5. For waiting time penalties pursuant to Labor Code § 203;

22 6. For penalties pursuant to Labor Code §§ 226, 558, and all other applicable Labor
23 Code and or employment laws and regulations;

24 7. For costs of suit incurred herein;

25 8. For punitive and exemplary damages, according to proof;

26 9. For reasonable attorneys' fees and costs of suit pursuant to Labor Code §§ 218.5,
27 226, 432.6(d), 1193.6, 1194 and 2699(g), Code of Civil Procedure 1021.5, the "common fund"
28 theory, the "substantial benefit" theory, and/or other applicable law;

- 1 10. For pre-judgment and post-judgment interest as provided by California law;
- 2 11. For public injunctive and declaratory relief that Defendant's purported arbitration
- 3 agreements regarding contracts entered into, modified, or extended after January 1, 2020, are
- 4 invalid and unenforceable pursuant to Labor Code § 432.6 and governing case law, and requiring
- 5 that Defendant properly classify the workers at issue herein as employees rather than independent
- 6 contractors, and comply with all corresponding obligations, including but not limited to paying
- 7 federal Social Security and payroll taxes, unemployment insurance taxes and state employment
- 8 taxes, and providing worker's compensation insurance, and complying with all tax reporting
- 9 obligations;
- 10 12. For any other appropriate equitable relief pursuant to California law; and
- 11 13. For all other relief the Court may deem just and proper.

12
13 Dated: December 10, 2021

WUCETICH & KOROVILAS LLP

14
15 By: _____


Dimitrios V. Korovilas
Attorneys for Plaintiff
STEVEN FUHRER

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DEMAND FOR JURY TRIAL

Plaintiff Steven Fuhrer hereby demands a trial by jury on all issues so triable.

Dated: December 10, 2021

WUCETICH & KOROVILAS LLP

By: _____



Dimitrios V. Korovilas
Attorneys for Plaintiff
STEVEN FUHRER

WUCETICH



KOROVILAS

Wucetich & Korovilas LLP
222 N. Pacific Coast Hwy., Suite 2000
El Segundo, California 90245
Tel. (310) 335-2001
Fax (310) 364-5201
www.wukolaw.com

Dimitrios V. Korovilas, Esq.
dimitri@wukolaw.com

April 12, 2021

VIA CERTIFIED MAIL

Julie A. Su, Secretary
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814

Neutron Holdings, Inc.
c/o National Registered Agents, Inc.
818 West Seventh Street, Suite 930
Los Angeles, CA 90017
(agent for service of process address)

Neutron Holdings, Inc.
Attn: General Counsel
85 2nd Street, Suite 100
San Francisco, CA 94105
(entity & mailing address)

Re: Fuhrer v. Neutron Holdings, Inc.
Notice of Intent to Bring Civil Action Pursuant to Private Attorneys General Act

Dear Ms. Su:

This letter is to provide notice pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Cal. Labor Code § 2698 *et seq.*, of our intent to pursue a representative civil action on behalf of all "Logistics Providers" (previously called "Juicers") employed in California by Neutron Holdings, Inc., on behalf of our client, Steven Fuhrer. The action will be based on the company's misclassification of these workers as independent contractors. The misclassification of these workers gives rise to various violations of California labor law, and accordingly makes Mr. Fuhrer and all Logistics Providers employed by the company "aggrieved employees" within the meaning of PAGA. The facts and theories on which the civil action will be based are below.

According to the California Secretary of State's website, the address for service of process, entity address, and mailing address for Neutron Holdings, Inc. are as follows:

Entity & Mailing Address:

Neutron Holdings, Inc.
85 2nd Street, 1st Floor
San Francisco, CA 94105

Address for Service of Process:

Neutron Holdings, Inc.,
c/o National Registered Agents, Inc.
818 West Seventh Street, Suite 930
Los Angeles, CA 90017



Facts

Neutron Holdings, Inc. d/b/a “Lime” (hereinafter “Lime”) is a dockless scooter-share company based in San Francisco, California, operating under the brand name “Lime”. Founded in January 2017, Lime operates electric scooters in over 100 cities throughout the United States, including various cities throughout California. Lime has quickly grown to service hundreds of thousands of users and according to reports has previously been valued at over \$1 billion.

Yet Lime’s success is unfortunately built on the backs of a misclassified and underpaid work force. Each electric Lime scooter is powered using a rechargeable battery, which depletes quickly. Though battery life depends on a variety of factors, including frequency and intensity of use, scooters generally require daily charging. Lime’s continued operation depends entirely on its employment of an army of “Logistics Providers” (hereinafter “LPs”), which in California Lime previously and sometimes does still call “Juicers” – thousands of individuals hired by Lime to venture out at night and manually collect a depleted scooter, take it home to recharge, and release it back onto the street for use by customers. Lime controls each step in this process through its Lime app. The app instructs the LP or Juicer where depleted scooters are located. Once charged, the app pinpoints specific locations where LPs or Juicers are required to release scooters back onto the street. LPs or Juicers are generally required to release the scooters only in these locations, in sets of three, and by certain times of day. In order to charge the scooters at home, Lime requires LPs or Juicers to use specific charging equipment that LPs or Juicers must obtain from Lime at their own expense, and to supply their own electricity source. Lime imposes strict requirements with which LPs and Juicers must comply regarding their work, including its “BLT standard” (i.e., battery, timing, and location requirements), and LPs and Juicers are subject to pay reduction for failure to comply.

Lime does not pay LPs or Juicers for all time worked, but rather on a piece-rate basis. Lime pays LPs or Juicers a flat fee, generally \$5, for each scooter that a LP or Juicer successfully collects, recharges, and releases back onto the street. In many instances, however, collecting a particular scooter turns out not to be possible or takes an excessive amount of time, due to errors in the Lime app, interference from other LPs or Juicers (such as when a scooter has already been collected by someone else before the LP or Juicer arrives), barriers (such as when a scooter has been taken into a customer’s home or is behind a fence), or other reasons. LPs or Juicers may therefore spend significant time working for Lime in an attempt to locate, collect, and recharge scooters, only to be unsuccessful at collecting any. Or to spend an excessive amount of time collecting only one or a few scooters, earning little to no money for all their time worked. Even generally absent significant problems or interference, the process can take hours, with a LP or Juicer earning potentially only \$5. Lime does not reimburse workers for the costs of electricity necessary to recharge the scooters, for costs of the vehicle or gas used in the course of travelling around a city to locate and collect scooters by car, for expenses related to the necessary use of a smartphone, for the costs of the specific equipment necessary to charge the scooters, for shipping charges related to the shipment of such chargers from Lime to the LP or Juicer, or for any other expenses incurred in performing their work.



Lime's Willful Misclassification of LPs or Juicers as Independent Contractors

In order to circumvent California wage and hour laws, Lime misclassifies its LP and Juicer workforce as independent contractors. As noted by the California Supreme Court, there are substantial economic incentives for a business to mischaracterize workers as independent contractors rather than employees. See *Dynamex Operations v. Superior Court*, 4 Cal. 5th 903 (2018); Labor Code § 2750.3. These include the unfair competitive advantage the business may obtain over competitors that properly classify similar workers as employees and that thereby assume the fiscal and other responsibilities and burdens that an employer owes to its employees. If a worker should properly be classified as an employee, the hiring business bears the responsibility of paying federal Social Security and payroll taxes, unemployment insurance taxes and state employment taxes, providing worker's compensation insurance, and, most relevant here, complying with numerous statutes and regulations governing the wages, hours, and working conditions of employees. On the other hand, if a worker should properly be classified as an independent contractor, the business does not bear any of those costs or responsibilities, the worker obtains none of the numerous labor law benefits, and the public may be required under applicable laws to assume additional financial burdens with respect to such workers and their families. *Id.* In *Dynamex*, the Supreme Court adopted what has become known as the "ABC" test in determining whether a worker may properly be categorized as an independent contractor. It is clear under that standard that Lime has misclassified its workforce of LPs or Juicers.

The Supreme Court in held in *Dynamex* that a hiring entity must establish all of the following to support the classification of a worker as an independent contractor:

- A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- B) that the worker performs work that is outside the usual course of the hiring entity's business; and
- C) that the worker is customarily engaged in an independently established trade, occupation, or business.

Dynamex, 4 Cal. 4th at 964. The California legislature has codified the *Dynamex* test in Labor Code § 2750.3 and later § 2775. Lime cannot satisfy any of these requirements with respect to its LP or Juicer employees, let alone all of them as required.

Perhaps most glaringly, LPs or Juicers are not performing work that is outside the usual course of Lime's business. To the contrary, LPs or Juicers are performing work that is central to Lime's business. Absent LPs' or Juicers' work of collecting, recharging, and replacing the scooters back onto the street, the scooters would all quickly be depleted, could not operate, and Lime's business would altogether cease. In addition, LPs or Juicers are not free from the control and direction of Lime when recharging scooters. Rather, as referenced above, Lime tells LPs or Juicers exactly where



to go to locate depleted scooters, Lime tells LPs or Juicers exactly where to go to release recharged scooters back onto the street, Lime requires LPs or Juicers to use specific equipment that they must obtain from Lime to recharge scooters, and Lime requires that LPs or Juicers release scooters onto the street during designated times of day and in sets of three. Lime controls all these aspects of its LPs or Juicers' work through its Lime app. Lime in many instances docks a charger's pay if these tasks are not performed in compliance with the company's requirements, including its BLT standard. Finally, LPs or Juicers are not customarily engaged in an independently established trade, occupation, or business. Rather, LPs or Juicers are performing tasks specifically for Lime that require no particular skill, license, or trade skill. Accordingly, under the *Dynamex* standard, there is no question that LPs or Juicers must be considered employees, not independent contractors.

Notably, even under the standard that was applicable prior to *Dynamex*, Lime cannot properly classify its LPs or Juicers as independent contractors. See *Borello v. Dep't of Industrial Relations*, 48 Cal. 3d 341 (1989) (discussing variety of factors to be considered in determining independent contractor status). Similar to the analysis under the current standard, consideration of those factors leads to the inevitable conclusion that the LPs or Juicers should be considered employees. Lime has control or the right to control LPs or Juicers both as to the work done and the manner and means in which it is performed. LPs or Juicers are not performing services in an occupation or business distinct from Lime. Charging is instead a part of Lime's regular business – indeed, it is a central and necessary component of the business. Lime supplies the equipment used by LPs or Juicers, instructs LPs or Juicers where to locate depleted scooters, and instructs LPs or Juicers where and when to release recharged scooters. The services provided require no special skill, nor does LPs' or Juicers' opportunity for profit or loss depend on any managerial skill. Services are generally expected to be performed continuously and permanently, as charging is a daily necessity to Lime's continued operation. For these and other reasons, even under the standard applicable prior to *Dynamex*, LPs or Juicers could not properly be classified as independent contractors.

Lime also cannot satisfy the business-to-business exception to *Dynamex* and Labor Code § 2750.3 and § 2775 that was previously set forth in Labor Code § 2750.3(e) and now § 2776 because Lime cannot satisfy all of the elements required in those statutes to establish a bona fide business-to-business contractual relationship with LPs and Juicers. Specifically, LPs and Juicers are not free from Lime's control and direction for the reasons set forth above, the contracts that LPs and Juicers have with Lime do not specify in writing their payment amounts and payment rates, LPs and Juicers do not have required business licenses or tax registrations, LPs and Juicers are not customarily engaged in independently established businesses of the same nature as that involved in the work performed, LPs and Juicers do not advertise and hold themselves out to the public as available to provide the same or similar services as performed for Lime, LPs and Juicers do not provide their own tools (rather charging cables are obtained from Lime at LPs' and Juicers' own expense), LPs and Juicers cannot negotiate their own rates (rather Lime sets rates for tasks presented to LPs and Juicers on a take-it-or-leave-it basis), and LPs and Juicers cannot set their own work hours (but rather must work late at night and early in the morning during specified hours set by Lime or else face pay reduction).



Lime also cannot satisfy the “app-based driver” exception to *Dynamex* and Labor Code § 2775 set forth by Proposition 22, codified in Bus. & Prof. Code § 7488 *et seq.* Section 7463 defines “app-based” driver as “an individual who is a DNC courier, TNC driver, or TCP driver or permit holder; and for whom the conditions set forth in subdivisions (a) to (d), inclusive, of Section 7451 are satisfied.” Lime cannot satisfy the requirement of § 7451(a) that Lime “not unilaterally prescribe specific dates, times of day, or a minimum number of hours” because, as set forth above, Lime does specifically require that LPs and Juicers perform their work during specified hours as part of their BLT standards, or else face pay reduction. Further, Lime, LPs, and Juicers do not meet any of the definitions in Section 7463. Lime is not a “DNC” or “delivery network company.” Section 7463(f) defines this as “a business entity that maintains an online-enabled application or platform ***used to facilitate delivery services.*** . . .” (emphasis added). Section 7463(h) defines “delivery services” as:

the fulfilment of delivery requests, meaning the pickup from any location of any item or items and the delivery of the items using a passenger vehicle, bicycle, scooter, walking, public transportation, or other similar means of transportation, ***to a location selected by the customer*** located within 50 miles of the pickup location.... Delivery services may include the selection, collection, or purchase of items by a DNC courier provided that those tasks are done ***in connection with a delivery that the DNC courier has agreed to deliver.***

Bus. & Prof. Code § 7463(h) (emphasis added).) “DNC courier” is defined by § 7463(g) as “individual who provides delivery services through a DNC’s online-enabled application or platform.” Under these definitions, Lime is not a DNC and LPs and Juicers are not DNC couriers because Lime’s application is not used to facilitate delivery services nor do LPs and Juicers provide delivery services. LPs’ and Juicers’ primary task is to recharge electric scooters, not to transport them. Moreover, unlike delivery drivers, such as Postmates drivers or GrubHub drivers, LPs and Juicers do not pick up or deliver merchandise to customers. LPs and Juicers interact only with Lime, not Lime’s customers. LPs and Juicers are not delivering items “to a location selected by the customer,” as required by § 7463(h). Indeed, any argument by Lime that Prop 22 applies to LPs and Juicers would require that Lime be viewed simultaneously as ***both*** the DNC and the customer. Unlike the workers falling within the scope of Prop 22, LPs and Juicers perform services directly for Lime and do not interface with the public. Further, unlike ride-share drivers, such as Uber and Lyft, LPs and Juicers do not carry passengers. Cf. Bus. & Prof. Code § 7463(o). For these reasons, Prop 22 is totally inapplicable to this case.

Like all other of Lime’s California-based LPs or Juicers, our client, Mr. Fuhrer, was hired as a LP and Juicer by Lime and improperly classified as an independent contractor when he should have been classified as an employee. Mr. Fuhrer began work collecting, charging, and redeploying electric scooters for Lime starting in early 2018. Initially, Lime called his role a “Juicer”. In early 2020, Lime began calling his role a “Logistics Provider”. The work remained the same. Mr. Fuhrer remains a Logistics Provider for Lime, in that his contract has not been terminated by him or by Lime. Mr. Fuhrer performed work for Lime in many instances over the past few years, including recently, in and around the Santa Barbara and other Southern California areas, attempting to locate, collect, recharge, and re-release scooters. Lime controlled each step in the process of his work. The



app instructed him where depleted scooters were located. Once charged, the app pinpointed specific locations where he was required to release scooters, in sets, and by certain times of day. In order to charge the scooters at home, Lime required him to use specific equipment that he was required to obtain from Lime at his own expense. Lime did not pay him for all time worked, and in some instances did not pay him at all. Rather, Lime paid him a flat fee, generally \$5, for each scooter that he successfully collected, recharged, and released back onto the street. In many instances, however, collecting a particular scooter turned out, only after a significant expenditure of time, not to be possible or took an excessive amount of time, due to errors in the Lime app, interference from other LPs or Juicers (such as when the scooter was already collected by another LP or Juicer by the time of his arrival), barriers (such as when a scooter has been taken into a customer's home or is behind a fence), or other reasons. He therefore spent significant time working for Lime in an attempt to locate, collect, and recharge scooters, only to sometimes be unsuccessful at collecting any, or to spend an excessive amount of time collecting only one or a few scooters, earning little to no money for all his time worked. Even generally absent significant problems or interference, the process of locating, travelling to, collecting, recharging, and releasing a scooter back to a designated location would take hours, with him earning potentially only \$5.

Overview of Labor Law Violations

The intended civil action will assert representative claims pursuant to PAGA based on these facts and Lime's willful misclassification of its LP and Juicer workforce in California. Specifically, the action will allege with respect to these aggrieved employees the following violations and penalties:

- Willful misclassification and related penalties (Cal. Labor Code § 226.8);
- Failure to comply with the requirements for piece-rate basis compensation, including failure to compensate for non-productive time and rest and recovery periods separate from any piece-rate compensation, and failure to comply with the wage statement requirements for piece-rate compensation (Cal. Labor Code § 226.2);
- Failure to pay all wages and minimum wages and minimum wage violations (Cal. Lab. Code §§ 1194, 1194.2, 1197, 1197.1; California Minimum Wage Order MW-2019, Wage Order 4-2001, 9-2001);
- Failure to pay overtime wages (Cal. Lab. Code § 1194; MW-2019, Wage Order 4-2001, 9-2001);
- Improper deductions and paying less than the agreed-upon wage scale (Cal. Lab. Code §§ 221-224);
- Failure to provide meal and rest periods (Cal. Lab. Code § 226.7 and 512)
- Failure to reimburse expenses or losses incurred as a result of performing work duties, including charging LPs and Juicers for charging cables (Cal. Lab. Code §§ 450, 2802);
- Waiting time penalties (Cal. Lab. Code § 203);
- Inaccurate wage statements (Cal. Lab. Code § 226(a), 226.3);
- Failure to maintain accurate pay records (Cal. Labor Code § 1174);
- Failure to pay all wages by the appropriate pay period (Cal. Lab. Code § 204);



- PAGA penalties (Cal. Lab. Code §§ 2699 *et seq.*, 210, 216, 225.5, 226(a), 226.7, 226.8, 450, 558, 1174, 1197, 1197.1, 1199).

The facts regarding each of these violations are set forth in detail below.

Failure to Comply with Piece-Rate Compensation Requirements

Labor Code § 226.2, numerous California Supreme Court and Court of Appeal decisions, and numerous Opinion Letters from the DLSE make clear that any piece-rate compensation scheme must adequately compensate workers for, among other things, nonproductive time, rest and recovery periods, travel time, and other de minimis tasks.

The legislature has codified California law regarding piece-rate compensation in Labor Code § 226.2. The statute requires that employees “shall be compensated for . . . nonproductive time **separate from any piece-rate compensation.**” Labor Code § 226.2(a)(1) (emphasis added). Section 226.2 defines “other nonproductive time” as time under the employer’s control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis.” Labor Code § 226.2. The statute also makes clear that employees “shall be compensated for rest and recovery periods . . . **separate from any piece-rate compensation.**” Labor Code § 226.2(a)(1) (emphasis added). Section 226.2 further requires that itemized wage statements separately state “[t]he total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.” Labor Code § 226.2(a)(2)(A). The wage statements must also state “the total hours of other nonproductive time, . . . the rate of compensation, and the gross wages paid for that time during the pay period.” Labor Code § 226.2(a)(2)(B). Further, the statute requires that the pay rate for rest periods must be “**no less than the higher**” of either the applicable minimum wage or “[a]n hourly rate determined by dividing the total compensation for the workweek [excluding rest period pay and overtime] by the total hours worked during the workweek.” Labor Code § 226.2(a)(3)(A). Section 226.2(a)(4) further states that nonproductive time must be compensated at an hourly rate not less than the minimum wage. The amount of nonproductive time may be determined either through actual records or the employer’s reasonable estimates. *Id.* § 226.2(a)(5)

Although Labor Code Section 226.2 was recently enacted, it codified existing California case law regarding piece-rate compensation schemes and their failure to compensate employees for all hours worked. *See Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013); *see also Vaquero v. Stoneledge Furniture*, 9 Cal. App. 4th 98 (2017); *Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864, 871-72 (2013); *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314 (2005); *Quezada v. Con-Way Freight, Inc.*, 2012 WL 2847609 (N.D. Cal. July 11, 2012); *Ridgeway v. Wal-Mart Stores*, 2015 WL 3451966 (N.D. Cal. May 28, 2015).

California law also makes clear that an employer must compensate its workers for any travel commuting time that is either undertaken at the employer’s direction or control, or that is excessive, or which involves the transportation of any goods, equipment, or materials for the company. *See Morillion v. Royal Packing*, 22 Cal. 4th 575 (2000); *Rutti v. Lojack Corp.*, 596 F.3d 1046 (9th Cir. 2010);



Slavkov v. Fast Water Heater Partners I, LP, Case No. 14-CV-04324-JST, 2015 WL 8482141, at *3 (N.D. Cal. Dec. 10, 2015); *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 322–24 (2005); *see also* DLSE 4/22/2003 Opinion Letter; DLSE 2/21/02 Opinion Letter.

In addition to these long-established requirements that piece-rate compensation schemes separately compensate workers for rest periods, nonproductive time, and travel, the California Supreme Court's decision in *Troester v. Starbucks Corporation*, 421 P.3d 1114 (2018) makes clear that an employer cannot rely on the federal *de minimis* doctrine as any sort of defense.

Here, Lime's compensation of its LP and Juicer workforce violates all of these provisions regarding piece-rate compensation. Lime does not compensate LPs or Juicers for nonproductive time or for rest and recovery periods separate from any piece rate compensation, or even track that time. As referenced above, LPs or Juicers inevitably incur significant nonproductive time working for Lime that goes entirely uncompensated. Lime only pays LPs or Juicers a flat fee, generally \$5, for each scooter that a LP or Juicer successfully collects, recharges, and releases back onto the street. In many instances, however, collecting a particular scooter is not possible or takes an excessive amount of time, due to errors in the Lime app, interference from other LPs or Juicers, barriers, or other reasons. LPs or Juicers may therefore spend significant time working for Lime in an attempt to locate, collect, and recharge scooters, only to be unsuccessful and therefore uncompensated. Or to spend an excessive amount of time in the pursuit of collecting many scooters, only to collect one or a few scooters, earning no compensation for their time spent working for Lime that did not directly result in the collection, recharging, and release of a particular scooter. Lime also does not specifically compensate LPs or Juicers for time spent monitoring and waiting for scooters to recharge, or travelling between their home and different scooter locations, while they are transporting company property. LPs or Juicers also often work numerous hours for Lime, without any compensation for rest periods or meal periods separate from the piece-rate compensation. Wage statements issued to LPs or Juicers do not separately state the total hours of compensable rest and recovery periods, or total hours of nonproductive time, or any rate of compensation for either.

Accordingly, Lime's payment practices violate Labor Code Section 226.2.

Failure to Pay All Wages/Minimum Wage Violations

For similar reasons, Lime's payment practices also fail to pay LPs or Juicers the applicable state minimum wage for all hours worked. Lime only compensates LPs or Juicers on a piece-rate basis for their work, generally only \$5 dollars per scooter successfully collected, recharged, and rereleased, regardless of how long that process takes, regardless of whether this compensation results in the LP or Juicer being paid less than the hourly minimum wage, and without any compensation at all for nonproductive time, as described above. LPs or Juicers' compensation is not at all derivative of how many hours the LP or Juicer works. As set forth above, LPs or Juicers spend significant amounts of nonproductive time working for Lime, benefitting Lime, and under the control of Lime, all of which goes entirely uncompensated. Even in instances where a LP or Juicer is partially compensated for their time, the piece-rate compensation may end up with the LP or Juicer being paid less than the minimum wage.



California law prescribes that it is an automatic minimum wage violation when an employee works but is not compensated for each and every hour worked. *See Gonzalez v. Downtown L.A. Motors*, 215 Cal. App. 4th 36, 49-50 (2014); Labor Code § 226.2(a)(4); *Armenta v. Osmose, Inc.* (2005) 215 Cal. App. 4th 314, 323-324 (2005); *see also* Labor Code §§ 221-23. Notably, averaging wages over the workweek to meet minimum wage obligations is not permitted under the California Labor Code.

Failure to Pay All Overtime Wages Earned

Lime also fails to pay LPs and Juicers all the overtime pay for which they are entitled, or indeed any overtime pay at all. Because Lime does not track or pay LPs or Juicers for the non-piece rate hours they work, Lime fails to accurately assess how much is due in overtime wages to the LPs or Juicers and, thus, fails to pay LPs or Juicers accurate overtime wages.

Meal and Rest Period Violations

Lime also does not provide meal and rest periods in accordance with California law. Employees paid on a piece-rate system must also be separately compensated for rest periods, which Lime fails to do. *See* Labor Code § 226.2(a)(1); 226.2(a)(3)(A); *Bluford v. Safeway Stores, Inc.*, 216 Cal.App.4th 864 (2013); *Cardenas v. McLane FoodServices, Inc.*, 796 F.Supp.2d 1246, 1252 (C.D. Cal. 2011) (piece-rate pay system that did not separately pay truck drivers for non-driving duties and rest periods violates California law requiring compensation for each hour worked); *Reinhardt v. Gemini Motor Transport*, 869 F.Supp.2d 1158, 1168 (E.D. Cal. 2012) (piece-rate pay system that did not separately pay truck drivers for non-driving duties violates California law requiring compensation for each hour worked).

Failure to Reimburse for Business Expenses

Lime also fails to reimburse LPs or Juicers with respect to the equipment and tools they need to perform their work. LPs or Juicers require specialized charging equipment, which Lime requires LPs or Juicers to obtain from Lime at their own expense. LPs or Juicers are further required to supply their own electricity to charge the scooters without reimbursement. Lime also expects LPs or Juicers to provide their own vehicles and gas in the course of collecting scooters, without reimbursement.

Other Claims

The other alleged violations, including inaccurate wage statements and waiting time penalties, are largely derivative of the failure to pay minimum wage and overtime claims as well as the failure to provide meal and rest periods claim.

**Scope of Anticipated Action**

We intend to seek all penalties that are available for the violations described above on behalf of all Logistics Providers of Lime in California throughout the limitations period, including any tolling as may be appropriate. These penalties include, but are not limited to, those available under California Labor Code § 2699 *et seq.* as well as §§ 201-203, 204, 210, 216, 221-224, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 450, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1199, and 2802.

Please inform us if you intend to investigate this matter. Should you require any additional information, do not hesitate to contact me.

Sincerely,

Dimitrios V. Korovilas, Esq.